

IN THE UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF TENNESSEE
 AT CHATTANOOGA

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
-versus-	:	CR-4:10-32
	:	
JERRY WAYNE GIFFORD,	:	
	:	
Defendant.	:	

Chattanooga, Tennessee
 April 4, 2011

BEFORE: THE HONORABLE HARRY S. MATTICE, JR.,
 UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

TERRA BAY,
 Assistant United States Attorney
 1110 Market Street, Suite 301
 Chattanooga, Tennessee 37402

FOR THE DEFENDANT:

RICH HEINSMAN,
 823 Houston Street, Suite 202
 Chattanooga, Tennessee 37403

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1 THE COURT: The clerk will call the next case.

2 THE CLERK: Criminal Action No. 4-2010-CR-32, United
3 States of America versus Jerry Wayne Gifford.

4 THE COURT: All right. Mr. Gifford, we're here for
5 your sentencing today. And I see you have an attorney, Mr.
6 Heinsman, with you in court. Does he represent you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Mr. Gifford, you may recall
9 that at the time that Magistrate Judge Lee accepted your
10 guilty plea in this case that she deferred a decision about
11 whether or not to accept or reject your plea agreement with
12 the government. Do you recall that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: The reason she did that was to give me
15 an opportunity to review the presentence investigation report
16 in your case. And as I hope you know that report contains a
17 lot of information about both you and your case. And when I
18 review it, it permits me, among other things, to make a
19 determination about whether or not that I think that your plea
20 agreement with the government is a fair one. I've now
21 reviewed the presentence investigation report. I've also
22 reviewed your plea agreement. I do think it's a fair one and
23 I'm going to accept it. All right?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, my question to you, have you

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1 reviewed the presentence investigation report and have you had
2 adequate opportunity to discuss it with Mr. Heinsman, your
3 attorney?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Mr. Heinsman, do you feel that you've
6 had adequate opportunity to review and discuss the presentence
7 investigation report in the case with Mr. Gifford?

8 MR. HEINSMAN: Yes, Your Honor.

9 THE COURT: Does Mr. Gifford have any objections to
10 the presentence investigation report?

11 MR. HEINSMAN: No, sir.

12 THE COURT: All right. Who represents the
13 government?

14 MS. BAY: Terra Bay for the United States.

15 THE COURT: Does the government have any objections,
16 Ms. Bay?

17 MS. BAY: We do not. And we would note, again, this
18 reflects a third acceptance level in the PSR, and we do move
19 for that.

20 THE COURT: And I'll grant that third level.

21 Then in the absence of objections, I'm going to
22 order that the presentence investigation report be made a part
23 of the record in Mr. Gifford's case. I further find that the
24 presentence investigation report accurately reflects the facts
25 stated therein and correctly calculates the advisory

1 guidelines applicable to Mr. Gifford's case; that reflects a
2 total offense level of 34, criminal history category of six --
3 and, of course, that's to a certain extent that qualifies him
4 for -- well, it is a career offender under the guidelines --
5 resulting in an advisory guideline range of from 262 to 327
6 months.

7 Do you agree with that, Mr. Heinsman?

8 MR. HEINSMAN: Yes, Your Honor.

9 THE COURT: Do you agree, Ms. Bay?

10 MS. BAY: I do, Your Honor.

11 THE COURT: All right. Counsel, I don't believe
12 there are any outstanding motions in the case. Is that
13 correct?

14 MR. HEINSMAN: Yes, sir.

15 THE COURT: All right. Then before I impose
16 sentence, Mr. Gifford, I want to see if your attorney wants to
17 say anything on your behalf, then I'm going to hear from the
18 attorney for the government, then if you'd like to say
19 something before I impose sentence, I'll give you an
20 opportunity.

21 All right. Mr. Heinsman, is there anything you'd
22 like to say on behalf of Mr. Gifford? Obviously, Mr. Gifford
23 is facing under whatever I do today an extraordinarily long
24 sentence. I guess I'm saying this for Mr. Gifford's behalf,
25 but given his criminal history, he's earned every bit of it,

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1 it appears to me.

2 So, but what would you like to say, Mr. Heinsman?

3 MR. HEINSMAN: Took the words out of my mouth,
4 Judge. He's going to be in the --

5 THE COURT: You don't need to argue for me to being
6 any tougher on him than I am, because, I mean, you know, tell
7 you the truth, this is one we're getting close to throwing
8 away the key on, you know.

9 MR. HEINSMAN: Yes, sir. Really, my point -- I have
10 several points, some that are introduced by the PSR, but I
11 think that he's 39 years old, regardless of where we are in
12 the guidelines, this with his health condition, he has
13 Hepatitis C, as the report states and is undergoing treatment
14 for that. Actually, they're not treating him right now at
15 Bradley, but he was being treated. He may not see the end of
16 this regardless. Nevertheless --

17 THE COURT: I am going to recommend that he
18 participate in the 500 hour substance abuse treatment program,
19 I mean, you know, it's almost sort of closing the door, the
20 barn door after the horse has left, but I'm going to recommend
21 that anyway.

22 MR. HEINSMAN: Yes, Your Honor. And I appreciate
23 that. And he has tried to cooperate. He has -- I'm going to
24 quote from an e-mail from the U.S. Attorney, not Ms. Bay, but
25 the information was good, he expects that people will be

1 indicted based upon the information, so he has some --

2 THE COURT: Have you explained how Rule 35 works?

3 MR. HEINSMAN: I have. I have. And, Judge, you
4 know, in reading through his PSR and his history and he is
5 someone that was introduced to alcohol at eight years old, has
6 been in treatment since he was a teenager.

7 THE COURT: Yeah.

8 MR. HEINSMAN: Again, the --

9 THE COURT: I think his criminal history goes back
10 to age 15 if I recall correctly. Yeah.

11 MR. HEINSMAN: Yes, sir. Under those circumstances,
12 it's a difficult thing for him to accept responsibility just
13 because where he falls in the guidelines. And, you know, with
14 his health in mind, with his attempts to cooperate in mind,
15 and with the, again, with the difficulty of doing anything by
16 agreement in that area of the chart, I would ask the Court to
17 sentence him to the minimum.

18 THE COURT: All right. Ms. Bay, what would you like
19 to say?

20 MS. BAY: Your Honor, the Court is well aware of the
21 defendant's criminal history. And, you know, I've been
22 looking through it again myself this morning, and I see nine
23 prior drug offenses, convictions, nine prior drug convictions
24 before this one. And 20 years of -- I mean, he's a fairly
25 young man, but he's spent half of his life in and out of --

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1 THE COURT: Yeah.

2 MS. BAY: -- of jail and probation. And I think
3 that a sentence slightly more than the minimum would be
4 appropriate, maybe, maybe 280 months, something along those
5 lines.

6 THE COURT: All right. Mr. Gifford, it's your turn.
7 Anything -- it's hard to know what to say, isn't it?

8 THE DEFENDANT: Yeah, it is, man. And I'm sorry for
9 being here taking you all's time up. And I'm really sorry for
10 out there playing games with my addiction. I knew I had one.
11 I knew I couldn't beat it. And, basically, that's it, you
12 know. I've been locked up all of my life and I just, I
13 couldn't handle it, I guess. I don't know.

14 THE COURT: All right. Mr. Gifford, I appreciate
15 what you have to say. I'm going to impose a sentence in about
16 the mid range of your guideline range. You know, I think
17 that's probably the appropriate thing to do in this case.

18 All right. Ready for me to impose sentence?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. The Court has considered the
21 nature and circumstances of the offense, the history and
22 characteristics of the defendant, and the advisory guideline
23 range, as well as the other factors listed in Title 18, United
24 States Code, Section 3553(a).

25 Pursuant to the Sentencing Reform Act of 1984, it's

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1 the judgment of the Court on Count 1 that the defendant, Jerry
2 Wayne Gifford, is hereby committed to the custody of the
3 Bureau of Prisons to be imprisoned for a term of 294 months.

4 The Court will recommend that the defendant receive
5 500 hours of substance abuse treatment from the Bureau of
6 Prisons' Institution Residential Drug Abuse Treatment Program.

7 Upon release from imprisonment, the defendant shall
8 be placed on supervised release for a term of eight years.
9 Within 72 hours of release from the custody of the Bureau of
10 Prisons, the defendant shall report in person to the probation
11 office in the district to which the defendant is released.

12 While on supervised release, the defendant shall not
13 commit another federal, state, or local crime, shall comply
14 with the standard conditions that have been adopted by this
15 Court in Local Rule 83.10, and shall not illegally possess a
16 controlled substance.

17 The defendant shall not possess a firearm,
18 destructive device, or any other dangerous weapon.

19 The defendant shall cooperate in the collection of
20 DNA, as directed by the probation officer.

21 In addition, the defendant shall comply with the
22 following special conditions:

23 Number one, the defendant shall participate in a
24 program of testing and/or treatment for drug and/or alcohol
25 abuse, as directed by the probation officer until such time as

1 the defendant is released from the program by the probation
2 officer.

3 Number two, the defendant shall participate in a
4 program of mental health treatment, as directed by the
5 probation officer, until such time as the defendant is
6 released from the program by the probation officer.

7 The defendant shall waive all rights to
8 confidentiality regarding mental health treatment in order to
9 allow release of information to the supervising United States
10 Probation Officer and to authorize open communication between
11 the probation officer and the mental health treatment
12 provider.

13 It's further ordered that the defendant shall pay to
14 the United States a special assessment of \$100, pursuant to
15 Title 18, United States Code, Section 3013, which shall be due
16 immediately.

17 The Court finds that the defendant does not have the
18 ability to pay a fine, and the Court will waive the fine in
19 this case.

20 Does either party have any objections to the
21 sentence just pronounced that have not previously been raised.

22 Mr. Heinsman?

23 MR. HEINSMAN: No, sir.

24 THE COURT: Ms. Bay?

25 MS. BAY: We have no objection, Your Honor. And we

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1 would point out that the defendant did have an 851
2 enhancement.

3 THE COURT: Yeah. Let me ask him about that.
4 Mr. Gifford, I should have asked you about this before. As
5 you, I hope has been explained to you, I mean, part of the
6 reason your sentence is so high is because the government
7 filed a motion to enhance your sentence based upon a prior
8 conviction that you received. The one that they're relying on
9 and there are probably others they could have relied on, I
10 would imagine, but, I mean, the one that's in the notice that
11 I've got is from April 29th, 2003. It's Case No. 15297 from
12 the Criminal Court in Franklin County, Tennessee, for the
13 manufacture of Schedule II controlled substance. You were
14 sentenced to three years on November the 3rd, 2003. Let's
15 see.

16 MS. BAY: It's Paragraph 65, Your Honor.

17 THE COURT: Yeah. It's reflected in Paragraph 65 of
18 your presentence investigation report. My question to you is
19 do you affirm or deny you received that conviction?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You affirm it. All right. Are there
22 any counts to be dismissed, Ms. Bay?

23 MS. BAY: There are, Your Honor. We would move to
24 dismiss at this time against the defendant, Counts 2, 3, 4, 6
25 and 7.

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1 THE COURT: All right. Did Mr. Gifford waive most
2 of his appeal rights as part of his plea agreement with the
3 government, Mr. Heinsman?

4 MR. HEINSMAN: Yes, Your Honor.

5 THE COURT: All right. Then he does have some
6 residual rights. Will you explain those to him?

7 MR. HEINSMAN: Yes, Your Honor. I've explained them
8 and I usually send a closing letter to clients explaining them
9 again.

10 THE COURT: Okay. Is there anything else on behalf
11 of Mr. Gifford at this point, Mr. Heinsman?

12 MR. HEINSMAN: No, sir.

13 THE COURT: Anything else from the government,
14 Ms. Bay?

15 MS. BAY: No, Your Honor.

16 THE COURT: Good luck to you, Mr. Gifford.

17 THE DEFENDANT: Yes, sir.

18 END OF JUDGMENT PROCEEDINGS

19 I, Shannan Andrews, do hereby certify that I
20 reported in machine shorthand the proceedings in the
21 above-styled cause held April 4, 2011, and that this
transcript is an accurate record of said proceedings.

22 s/Shannan Andrews
23 Shannan Andrews
24 Official Court Reporter
25